

Message Text

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61

ORIGIN L-02

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ERDA-05 AID-05 CEA-01 CIAE-00 CIEP-01 COME-00 DODE-00

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DRAFTED BY L:SMSCHWEBEL:EMB

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AMEMBASSY STOCKHOLM

C O N F I D E N T I A L STATE 060008

E.O. 11652: GDS

TAGS: ENRG, OECD

SUBJECT: IEA: FLOOR PRICE DECISION: VOTING VARIATIONS

1. IN THE EVENT THAT ONE OR MORE IEA PARTICIPATING COUNTRIES (PCS) IS UNWILLING TO VOTE FOR THE GOVERNING BOARD'S DRAFT DECISION ON ACCELERATED DEVELOPMENT OF ALTERNATIVE ENERGY RESOURCES EMBRACING A FLOOR PRICE COMMITMENT, THE FOLLOWING APPEAR TO BE THE OPTIONS UNDER THE IEP AGREEMENT. IT IS BELIEVED THAT THE DECISION REQUIRES UNANIMITY UNDER THE TERMS OF ART. 61, AS A PARTICULAR DECISION WHICH IMPOSES ON THE PCS "NEW OBLIGATIONS NOT ALREADY SPECIFIED IN THIS AGREEMENT". (HOWEVER, SEE PARA. CONFIDENTIAL

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2(D) OF THIS MESSAGE.)

2. (A) AN OBJECTING COUNTRY COULD ABSTAIN FROM VOTING. UNDER ART. 62, PARA. 1, UNANIMITY REQUIRES ALL OF THE VOTES OF THE PCS "PRESENT AND VOTING." HOWEVER, "COUNTRIES ABSTAINING SHALL BE CONSIDERED AS NOT VOTING." THUS AN ABSTENTION BY ONE OR MORE PCS PERMITS THE OTHERS TO AGREE UPON A UNANIMOUS DECISION IMPOSING AN OBLIGATION ON ALL PCS, INCLUDING ABSTAINERS. (THIS SORT OF PROCEDURE HAS ITS PRECEDENT, NOTABLY IN U.N. SECURITY COUNCIL.) (B) THE DECISION, WHILE REQUIRING A UNANIMOUS VOTE, ALTERNATIVELY COULD SPECIFY, UNDER ART. 61, PARA. 2(B), THAT IT "SHALL

BE BINDING ONLY UNDER CERTAIN CONDITIONS". POSSIBLY SPECIFICATION OF THE CONDITIONS UNDER WHICH THE DECISION SHALL BE BINDING COULD PERMIT ONE OR MORE PCS CURRENTLY INCLINED NOT TO SUPPORT THE DECISION TO SUPPORT IT, OR TO ABSTAIN FROM A NEGATIVE VOTE. E.G., THE DECISION COULD STATE THAT IT WILL COME INTO EFFECT NOT ONLY UPON WORKING OUT OF THE MORE SPECIFIC AGREEMENTS IT CONTEMPLATES, BUT ALSO IF CONSULTATIONS BETWEEN PRODUCERS AND CONSUMERS DEMONSTRATE, BY A GIVEN DATE, THE UTILITY OF THE DECISION'S TAKING EFFECT. THIS APPROACH WOULD BUILD UPON THE UNDERSTANDING OF THE GB, AS STATED IN THE COVERING DRAFT DECISION, THAT "IN THE ELABORATION OF THIS SYSTEM DEVELOPMENTS IN THE PRODUCER/CONSUMER DIALOGUE WILL BE TAKEN INTO ACCOUNT AND THAT MODIFICATIONS MAY BE ADVISABLE". (SUCH AN APPROACH WOULD HAVE TO BE CAREFULLY THOUGHT OUT. IT MIGHT SO DILUTE THE DECISION'S IMPACT AND DELAY ITS IMPLEMENTATION AS TO BE UNACCEPTABLE TO USG. IT WOULD ALSO PRESENT THE PROBLEM OF WHO DECIDES, (PRESUMABLY THE GB), BY WHAT MAJORITY, WHEN CONSULTATIONS WITH THE PRODUCERS HAVE DEMONSTRATED THE UTILITY OF IMPLEMENTING THE FLOOR PRICE DECISION. AT THE SAME TIME, THE DRAFT DECISION, IF ADOPTED, IS AN AGREEMENT TO ADOPT AN "AGREEMENT TO ENCOURAGE AND SAFEGUARD INVESTMENTS IN THE BULK OF CONVENTIONAL ENERGY". THIS AGREEMENT TO AGREE, WHICH CONTEMPLATES FURTHER STAGE OF NEGOTIATION, MIGHT IN SOME WAY BE FURTHER CONDITIONED TO BRING ALONG RECALCITRANTS UNDER ART. 61, PARA. 1(B).)

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(C) THE DECISION ALTERNATIVELY COULD SPECIFY, UNDER ART. 61, PARA. 2(A) THAT IT SHALL NOT BE BINDING "ON ONE OR MORE" PCS. SUCH A DECISION COULD SIMPLY EXEMPT ONE OR MORE OBJECTING PCS BY NAME, OR OTHERWISE. (THE OBVIOUS DEFICIENCY IS NOT ONLY THAT THE UNITED FRONT OF IEA PCS IS DIMINISHED PRO TANTO, BUT THAT OPENING THIS POSSIBILITY MAY SWELL THE NUMBER OF PCS THAT SEEK EXEMPTION WITH THE RESULT THAT THE WHOLE DECISION COULD EFFECTIVELY

UNRAVEL.)

(D) ACCELERATED DEVELOPMENT OF ALTERNATIVE ENERGY RESOURCES MIGHT ALTERNATIVELY BE TREATED AS A SPECIAL ACTIVITY UNDER ART. 65. ANY TWO OR MORE PCS MAY DECIDE TO CARRY OUT SPECIAL ACTIVITIES WITHIN THE SCOPE OF THE AGREEMENT, OTHER THAN ACTIVITIES REQUIRED OF PCS UNDER CHAPTS. I TO V. THESE ACTIVITIES FALL UNDER CHAPT. VII, ON LONG TERM-COOPERATION ON ENERGY, IF NOT CHAPT. VIII ON RELATIONSWITH PRODUCERS. BUT TO THE EXTENT THAT THEY MAY BE SEEN AS FALLING UNDER CHAPT. II, ON DEMAND RESTRAINT, THEY CLEARLY ARE NOT REQUIRED BY THAT CHAPTER.

UNDER ART. 65, PCS THAT DO NOT WISH TO TAKE PART IN SUCH SPECIAL ACTIVITIES 'SHALL ABSTAIN FROM TAKING PART IN SUCH DECISIONS AND SHALL NOT BE BOUND BY THEM.' THESE PROVISIONS SUGGEST THAT DECISIONS OF THE GB ARE WITHIN THE SCOPE OF THIS ARTICLE. THE LAST SENTENCE OF ART. 65 DOES NOT OTHERWISE SUGGEST, FOR, EVEN THOUGH ITS PROVISION THAT PCS CARRYING OUT SUCH SPECIAL ACTIVITIES SHALL KEEP THE GB INFORMED MAY SUGGEST THAT IT IS PCS AMONG THEMSELVES RATHER THAN THE GB WHICH DECIDES UPON SUCH SPECIAL ACTIVITIES, THIS SENTENCE IS OPEN TO ANOTHER INTERPRETATION: THAT THE GB MAY DECIDE ON A SPECIAL ACTIVITY, WHICH ONLY CERTAIN PCS PARTICIPATE IN, BUT THAT THESE PCS KEEP ALL THE REST AND THE IEA SECRETARIAT INFORMED THROUGH THE MEDIUM OF THE GB. THE CONCLUSION THAT THE GB MAY TAKE DECISIONS AUTHORIZING SPECIAL ACTIVITIES AMONG THE SUBSCRIBERS TO THEM IS NOT REBUTTED BY THE TERMS OF ART. 65, PARA. 2 THAT, FOR THE IMPLEMENTATION OF SUCH SPECIAL ACTIVITIES, THE PCS CONCERNED MAY AGREE UPON VOTING PROCEDURES OTHER THAN THOSE PROVIDED FOR IN ARTS. 61 AND 62, FOR THIS SPEAKS OF "IMPLEMENTATION", NOT CONFIDENTIAL

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INITIATION.

3. SHOULD IT NOT BE POSSIBLE TO PERSUADE ANY RECALCITRANT PC TO ABSTAIN UNDER ART. 62, PARA. 1, RELIANCE UPON THE TERMS OF ART. 65, WHICH AREQUITE FLEXIBLE, MAY BE THE MOST PROMISING APPROACH. ROBINSON

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